U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
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June 24, 2026

By ECF
Honorable Ramon E. Reyes, Jr.
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Reyes Benitez v. Mullin, et al.*, 26-cv-03720 (Reyes, J.)

Dear Judge Reyes:

This Office represents the Respondents in this habeas action, in which Petitioner Hugo Adonis Reyes Benitez ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* ECF No. 1 ("Petition"). Respondents respectfully write in accordance with the Court's Order to Show Cause dated June 20, 2026 (the "OTSC"), which directed Respondents to show cause why a writ of habeas corpus should not be issued.[1] As explained below, the Petition, incorrectly assumes that Petitioner was not properly detained, was not placed in immigration proceedings, and has no recourse to challenge his immigration detention. *See* ECF No. 1. Petitioner is properly being detained pursuant to 8 U.S.C. § 1226(a), received the requisite custody determination by Immigration and Customs Enforcement ("ICE"), and to the extent he has recourse it is administrative. Instead of seeking a bond hearing, he filed this habeas action first.

Relevant Background

Petitioner is an El Salvadorian national who unlawfully entered the U.S. in 2015. *See* Declaration of Christopher Schultz ("Schultz Decl.") ¶1, 3 & Ex. E.

On August 25, 2015, U.S. Customs and Border Patrol, Border Patrol Agents observed Petitioner and his mother crossing the Rio Grande River by the southern border into the United States without being admitted, paroled or inspected to the United States. Border Patrol apprehended Petitioner and took him into custody. Schultz Decl. ¶3.

On August 26, 2015, a Border Patrol Agent served Petitioner with Notice to Appear, charging him with removability under Immigration and Nationality Act ("INA") section 212(a)(6)(A)(i) [8 U.S.C. §1182(a)(6)(A)(i)], as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General (the "2015 NTA"). Schultz Decl. ¶4 & Ex. B. Petitioner was

[1] Pursuant to Docket Text Order dated June 23, 2026, this Court granted Respondent's Motion for Extension to file their Response by June 24, 2026.

then released from ICE custody on an Order of Recognizance ("OREC"), Form I-220A. Schultz Decl. ¶4 & Ex. C.

On November 16, 2017, Petitioner admitted to the factual allegations in the NTA and the charge of removability during his removal proceedings. Schultz Decl. ¶5. The immigration court set the matter for another master calendar hearing to allow Petitioner time to pursue the filing Form I-360, Petition for Amerasian, Widower, or Special Immigrant ("SIJ") before United States Citizenship and Immigration Services ("USCIS"). *Id.*

On July 13, 2018, Petitioner filed that SIJ application. Schultz Decl. ¶6. On December 19, 2018, USCIS denied the SIJ application based on factual inconsistencies contained in an Order of Special Findings issued by the Family Court of the State of New York. Schultz Decl. ¶7. On May 6, 2019, Petitioner filed another Form I-360, SIJ application with USCIS. Schultz Decl. ¶8. On June 15, 2020, USCIS issued Petitioner's SIJ classification, which is not a legal status but permits the alien to file for other benefits, and granted Deferred Action ("DA") for a period of four years, or until June 15, 2024. DA was later extended. Schultz Decl. ¶10.

On November 21, 2023, the immigration court granted DHS and Petitioner's joint motion to dismiss removal proceedings without prejudice. Schultz Decl. ¶11 & Ex. D. Petitioner's OREC was cancelled as he was longer in removal proceedings. Schultz Decl. ¶11 & Ex. C.

DHS records checks and databases revealed that there was reason to believe Petitioner was a verified member of [redacted] Additionally, records checks showed Petitioner lacked legal status; his SIJ classification is not itself legal status, and may instead be used to apply for legal status.[2] Schultz Decl. ¶13 & Ex. E.

On June 11, 2026, ICE issued a Form I-200 Warrant for Arrest of Alien ("Form I-200") and also a new NTA charging Petitioner as inadmissible under Section 212(a)(6)(A)(i) of the INA [8 U.S.C. §1182(a)(6)(A)(i)], as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General (the "2026 NTA"). Schultz Decl. ¶14 & Ex. E, F, and G.

On June 17, 2026, USCIS served Petitioner with notice that it had individually reviewed his case and exercised its discretion to terminate his deferred action. Schultz Decl. ¶15 & Ex. H.

On June 18, 2026, ICE conduct a targeted operation for Petitioner in the area of Hauppauge, New York. Schultz Decl. ¶16. At approximately 1:00 p.m., ICE Officers observed a male individual who matched the physical description of Petitioner, enter the front door of the USCIS Application Support Center ("ASC") located at 330 Wheeler Road, Hauppauge, New York. *Id.* ICE Officers entered the USCIS ASC on foot, approached Petitioner and identified themselves as Deportation Officers with Immigration and Customs Enforcement. *Id.* The Officers requested identification from Petitioner and Petitioner produced an El Salvador Passport confirming his identity as the intended target. *Id.* ICE Officers then arrested Petitioner at approximately 1:10 p.m.

[2] Courts in this district have concluded, in the context of other kinds of immigration benefits, that merely having "a pathway to permanent residency . . . does not strip the government of removal power." *Lira Caceres v. Shanahan*, No. 26-cv-0016, 2026 WL 233215, at *3, n.3 (E.D.N.Y. Jan. 28, 2026) (Merchant, J.) (collecting cases regarding special immigrant juvenile ("SIJ") status, another pathway to permanent residency, having no bearing on detention or removal).

pursuant to the Form I-200 Warrant for Arrest of Alien and detained him pursuant to INA §236(a) [8 U.S.C. §1226(a)]. Schultz Decl. ¶16 & Ex. G.

During processing that same day, ICE personally served Petitioner with the 2026 NTA. Schultz Decl. ¶17 & Ex. G. The 2026 NTA was filed also with the Executive Office of Immigration Review ("EOIR"), commencing removal proceedings against Petitioner. *Id.*

Also on June 18, 2026, ICE conducted an individualized custody determination pursuant to INA § 236(a), 8 U.S.C. § 1226(a), interviewing Petitioner and conducting records and fingerprint checks, and completed a worksheet (which is not served on the detainee) pursuant to the stipulation and order entered by the Court in *Velesaca v. Decker,* No. 20-cv-1803 (S.D.N.Y.). Schultz Decl. ¶18 & Ex. I. ICE elected to detain Petitioner as he was a danger to the community for being a member of La Mara Salvatrucha ("MS-13"). *Id.* ICE completed a Form I-286, Notice of Custody Determination, and served Petitioner with that I-286 on June 18, 2026. Schultz Decl. ¶18 & Ex. J. The contents of the notice were read to Petitioner in Spanish. *Id.* Petitioner signed the form, acknowledging receipt of the notification and requested an immigration judge review his custody determination. *Id.* This form was filed with EOIR.

Petitioner remains in detained pursuant to INA § 236(a) [8 U.S.C. § 1226(a)]. Schultz Decl. ¶22.

Between June 18 and June 24 Petitioner did not independently seek a bond hearing before immigration court. Schultz Decl. ¶21. Instead, Petitioner filed this action grieving his detention. Petitioner also has a Master calendar hearing scheduled for June 25, 2026 at the Varick immigration court in New York. Schultz Decl. ¶21 & Ex. K.

Discussion

Petitioner's Claims Arising Under the Constitution Are Red Herrings

Petitioner's Counts one through five, are all red herrings because they presume there was no basis for his detention and that there were no pending immigration proceedings. That is not the case. Petitioner is properly being detained pursuant to 8 U.S.C. § 1226(a), has received an initial custody determination, was served with the pertinent custody determination forms. Petitioner was served a Form I-286 that reflects that his detention was under 8 U.S.C. § 1226(a), which is a provision that makes custody discretionary (allowing ICE to decide to "continue to detain" the alien) and permits a custody redetermination under 8 C.F.R. 236.1(d)(8). Additionally, Petitioner has pending immigration removal proceedings at the Varick immigration court in New York. Thus, all these claims are based on a false premise.

ICE Detained Petitioner Pursuant to 8 U.S.C. §1226(a) and His Recourse Is Administrative

Petitioner's habeas suit should be denied because he has been properly detained pursuant to Section 1226(a). Under § 1226(a), the Government may arrest and detain an alien during his removal proceedings or release him on bond or conditional parole. Section 1226(a) provides, in relevant part, that:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.

> Except as provided in subsection (c) and pending such decision, the Attorney General
>
> (1) may continue to detain the arrested alien; and
>
> (2) may release the alien on—
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole;

8 U.S.C. § 1226(a). By regulation, immigration officers conduct custodial determinations and may release aliens if the alien meets his burden of showing that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). *See Fontanelli, as Next Friend of Bernal Garcia v. Francis*, No. 25-cv-07715 (JLR), 2025 WL 2773234, at *4 (S.D.N.Y. Sept. 29, 2025) ("The Government's broad [post-arrest detention] discretion under § 1226(a) has a limitation: before the Government may exercise such discretion to detain a person, § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination, specifically whether the noncitizen is a danger to person or property or persons and is likely to appear for any future proceeding.") (citations and internal quotation marks omitted); *Hamilton v. Shanahan*, No. 09-cv-6869 (SAS), 2009 WL 5173927, at *2 (recognizing that the alien bears the burden of proof). Notably, the statute separates arrest from detention, and requires after the arrest and detention, ICE to assess whether the alien should "continue to be detained." 8 U.S.C. §. 1226(a); *see also Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (referring to "post-arrest custody determination" under § 1226(a)). The statute's use of the phrase "continue to detain" necessarily implies that, at the time the government makes the custody determination, the alien has already been apprehended and detained. *See Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (referring to "post-arrest custody determination" under § 1226(a); *see also* Ex. H (Stipulation and Order of Dismissal and Settlement in *Velesaca v. Decker, et al.*, No. 20-cv-1080 (S.D.N.Y.), ECF 177) (requiring that the worksheet laying out the non-exhaustive bases for the custodial determination be completed not prior to arrest but instead within 48 hours after the arrest). *See* Appendix 1 – Stipulation and Order of Dismissal and Settlement in *Velesaca v. Decker, et al.*, No. 20-cv-1080 (S.D.N.Y.)[3]

Here, ICE conducted an initial custody determination, after among other things interviewing the Petitioner, conducting record checks, and elected to detain Petitioner. *See* Schultz Decl., ¶18 & Ex. I. If Petitioner is unhappy with the custody determination his remedy is administrative. Once ICE makes the individualized custody determination, 8 U.S.C. § 1226(e) jurisdictionally bars courts from reviewing that determination. Section 1226(e) provides that "[ICE]'s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by [ICE] under this section regarding the detention of any [noncitizen] or the revocation or denial of bond or parole." 8 U.S.C. § 1226(e). Thus, "[a] district court has no authority to review ICE's discretionary determinations made under [Section 1226] or otherwise question their propriety." *Fontanelli*, 2025 WL 2773234, at *4.

[3] This worksheet is not meant to be comprehensive and is not provided to the alien. *See* Appendix 1, ¶¶13, 24.

That does not mean the alien is without recourse. After ICE makes the initial custody determination, an alien can request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 C.F.R. § 236.1(d)(1). Under 8 C.F.R. § 1003.19(h)(3), an alien may seek a redetermination of custody conditions set by ICE before an immigration judge must "first demonstrate, by clear and convincing evidence, that release would not pose a danger to other persons or to property. If an alien meets this burden, the alien must further demonstrate, by clear and convincing evidence, that the alien is likely to appear for any scheduled proceeding or interview." *See Hylton v. Shanahan*, 2015 WL 3604328 (S.D.N.Y. June 9, 2015) (declining to shift burden of proof onto government in a bond hearing in immigration court where respondent was detained under § 1226(a)). ICE's initial custody determination was provided to Petitioner. Schultz Decl. ¶18. Ex. J. Petitioner requested a review of the ICE custody determination by an immigration judge. Schultz Decl. ¶21. Petitioner has not independently moved for a bond hearing. For its part ICE has filed the Form I-286 advising EOIR that Petitioner wants one, and EOIR may schedule one shortly especially if he raises it at tomorrow's master calendar hearing. That hearing before the IJ is his remedy.

If dissatisfied with the IJ decision, the alien can seek review by the Board of Immigration Appeals ("BIA"). *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3). *See also Monterosa v. Decker*, No. 20-cv-02653, 2020 WL 1847771, at *3 (S.D.N.Y. Apr. 11, 2020) ("After ICE makes and initial detention decision, any person who is detained has the right to request a bond hearing before an Immigration Judge.").

No review of the assessment of factors at the bond hearing is available in an Article III court. *See Arevalo-Guasco v. Dubois*, 788 Fed Appx. 25, 27 (2d Cir. 2019) (concluding that § 1226(e) precludes judicial review of the IJ's weighing of evidence and factual findings regarding whether [Petitioner-Appellant] is a danger to the community"); *Hamilton*, 2009 WL 5173927, at *3 ("Section 1226(e) specifically divests [district courts] of jurisdiction to review the decisions of the IJ and the BIA (acting on behalf of the Attorney General) regarding the detention of aliens under Section 1226.").

Here, ICE is detaining Petitioner pursuant to § 1226(a). *See* Schultz Decl. ¶22. ICE, upon interview and records checks, made an initial custody determination and elected to continue to detain the Petitioner as he was a danger to the community. *See* Schultz Declaration, Ex. I. Petitioner has yet to receive his bond hearing. Instead of pursuing his administrative remedies, Petitioner chose to file this action instead. In any event, that immigration judge bond hearing is his remedy. No bond hearing has occurred (let alone BIA review of such IJ decision, if the outcome were to prove unfavorable to Petitioner). Therefore, Petitioner has not exhausted administrative remedies. Numerous courts in this Circuit have held that to the extent that habeas petitioners want to challenge the initial custody determination, ordinarily they must exhaust administrative remedies before seeking federal court intervention. *See, e.g., Quezada Molina v. Lyons, et. al.* No. 26-cv-03184 (E.D.N.Y. June 11, 2026) (DeArcy Hall, J.); *Almonte Rojas v. Genalo*, No. 25-cv-6543, 2026 WL 275991, at *1 (E.D.N.Y. Feb. 3, 2026) (Komitee, J.) (citing *Castillo Lachapel v. Joyce*, 786 F. Supp. 3d 860, 864 (S.D.N.Y. 2025)); *accord Fontanelli*, 2025 WL 2773234, at *5-*8. *See also Capunay Guzman v. Joyce,* 786 F.Supp.3d 865, 869-871 (S.D.N.Y. 2025); *Roman v. Decker*, No. 20-cv-3752 (JGK), 2020 WL 4273823, at * 7 (S.D.N.Y. July 24, 2020); *Paz Nativi v. Shanahan*, No. 16-cv-8496, 2017 WL 281751, at *1 (S.D.N.Y. Jan. 23, 2017) ("before immigration detention may be challenged in federal court . . . exhaustion is generally required as a prudential matter" (collecting cases)). The exhaustion requirement "aims to provide the agency

with a chance to correct its own errors, 'protect[ ] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.'" *Guzman,* 786 F.Supp.3d at 869-871 (*quoting Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.)).

As Petitioner has received an initial custody determination pursuant to § 1226(a) and has failed to exhaust administrative remedies at his disposal (*i.e.*, a bond hearing before an IJ), the Petition should be denied and this action dismissed. As the court in *Castillo Lachapel* explained, "[i]f the immigration judge releases [petitioner] on bond, his [habeas petition would be moot . . . . And even if the immigration judge denies bond, [the] petition could be mooted if the [BIA] reverses that determination." 786 F. Supp. 3d at 864 (internal quotation marks and citation omitted).

Nor do any of the recognized exceptions to exhaustion apply here. A district court may in its discretion excuse exhaustion when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile and (4) in certain instances a plaintiff has raised a substantial constitutional question." *See Beharry*, 329 F.2d at 62. Numerous courts in this Circuit have also found that none of these exceptions apply where, as here, an immigration judge or the BIA could release a habeas petitioner detained under 8 U.S.C. § 1226(a) on bond. *See, e.g.*, *Castillo Lachapel*, 2025 WL 1685576 at *3; *Capunay Guzman*, 786 F. Supp. 3d at 870; *Monterosa*, 2020 WL 1847771 at *6-*7; *Roman*, 2020 WL 4273823, at *7.

With respect to the first exception, as explained above, Petitioner has available administrative remedies—a bond hearing with an immigration judge *and* appeal of the immigration judge's decision, if adverse, to the BIA. *See Castilla Lachapel*, 2025 WL 1685576, at *3 (describing the two levels of administrative review available to Petitioner). "Because [Petitioner]'s [potential] bond hearing may provide him with the relief that he seeks—*i.e.*, his release—this Court concludes in the exercise of its discretion that [Petitioner] must exhaust these avenues before seeking judicial relief." *Id.* (internal quotations and citations omitted). *See Paz Nativi*, 2017 WL 281751, at *2 ("The pendency of a BIA appeal that could potentially moot [petitioner's] habeas petition counsels for the Court to stay its hand until the exhaustion of administrative review in the name of preserving scarce judicial resources and avoiding the possibility of duplicative or conflicting rulings.").

The second exception is also inapplicable. Petitioner cannot show irreparable harm at this time. Petitioner has been detained for about a week. The risk of prolonged detention does not constitute an irreparable injury that excuses the prudential exhaustion requirement. *See Michalski v. Decker,* 279 F. Supp. 3d 487, 496 (S.D.N.Y. January 4, 2018); *Capunay Guzman*, 786 F. Supp. 3d at 871; *Roman*, 2020 WL 4273823, at *8.

Similarly, as to the third exception, Petitioner has not shown that a bond hearing would be futile. *See Capunay Guzman*, 786 F. Supp. 3d at 870 (petitioner's "arguments concerning the futility of any bond motion are similarly premature, as he has not yet made a motion for bond"). *See also Cabral v. Decker*, 331 F. Supp. 3d 255, 263 n. 6 (S.D.N.Y. September 21, 2018) ("[T]he question of whether the petitioner's yet-to-happen bond hearing complies with due process is not before this Court.").

With respect to the fourth exception, "[m]ere existence of a constitutional issue . . . does not create an automatic exception to an exhaustion requirement." *Monterosa,* 2020 WL 1847771, at *5. "Thus, when applying this exception, 'courts will endeavor to avoid deciding a constitutional issue if the case might be resolved on a narrower factual basis.'" *Capunay Guzman*, 786 F. Supp. 3d at 871 (quoting *Monterosa*, 2020 WL 1847771, at *5). As the court in *Capunary Guzman* noted, only a few courts in this Circuit have excused exhaustion under the fourth exception in cases where the petitioner had been detained and denied bond at the bond hearing, or was not yet detained and sought to prevent re-detention. *See id.* (collecting cases). Indeed, Petitioner's claims can be mooted by the possibility of being released on bond after exhausting his administrative remedies, and thus [he] has failed to show that the fourth exception to the prudential exhaustion requirement applies. *See id.*

* * *

For the foregoing reasons, Respondents respectfully request that the Petition be denied. Respondents thank the Court for consideration of this submission.

Respectfully submitted,

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